

REMARKS

This is a reply to the Office Action mailed February 21, 2003, with a shortened statutory response period of three (3) months from the mailing date, extended three months by Petition filed herewith. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-17 are presently pending in the application and stand rejected. Applicants respectfully traverse the rejections. Applicants acknowledge the Examiner's withdrawal of the election/restriction requirement.

The Examiner has rejected claims 1, 5-7, and 11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,133,908. The Examiner also rejected claim 1-17 under 35 U.S.C. §103 in view of the '908 Patent. Applicants respectfully submit that the '908 Patent neither anticipates nor renders obvious the claims of the present application.

The '908 Patent discloses a method for preparing a dispersible colloidal system of spherical particles having a size less than 500 nm. The method includes the steps of:

- 1) preparing a liquid phase of a substance in a solvent and a surfactant;
- 2) preparing a liquid phase of a non-solvent, the non-solvent being miscible in all proportions with the solvent;
- 3) the addition of the solutions of 1) and 2) with the other with moderate stirring to produce a colloidal suspension of nanoparticles; and
- 4) optionally removal of solvents.

The '908 Patent teaches away from making crystalline particles, as recited in all claims of the instant application. The '908 Patent discloses in Example 14 that the disclosed process when carried out using indomethacin yields non-crystalline particles (Col. 8, lines 65-67). There is no disclosure in the '908 Patent of making crystalline particles.

Accordingly, the '908 Patent does not disclose this claimed feature, and, therefore, this rejection under 35 U.S.C. §102 (b) is not proper. Further, by disclosing a process for making amorphous particles, the '908 Patent teaches away from making crystalline particles. Thus, the Examiner has failed to present a prima facie case of obviousness, and, therefore, the rejection of claims 1-17 should be withdrawn.

Accordingly, Applicants respectfully submit the pending claims are non-obvious, and patentable in view of the '908 Patent.

In view of the foregoing Amendments and Remarks, Applicants respectfully submit that Claims 1-120 are in condition for allowance and respectfully request early notice of the same.

Respectfully submitted,
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